



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility/Provide limited government: This bill will have the effect of increasing the maximum sentence which may be imposed for certain offenses committed in or within 1,000 feet of certain locations.

#### B. EFFECT OF PROPOSED CHANGES:

##### *Current law:*

Section 800.02, F.S. provides that a person who commits any unnatural and lascivious act with another person commits a second degree misdemeanor, punishable by up to sixty days in county jail and a fine of up to \$500. The jury instruction defines the term "unnatural" as meaning "not in accordance with nature of with normal feelings or behavior." The term "lascivious" means "lustful, normally tending to excite a desire for sexual satisfaction".

In *Conforti v. State*,<sup>1</sup> the defendant was charged with a violation of this section after he masturbated while sitting in his car with an undercover law enforcement officer outside watching. The court reversed the conviction, stating that the plain wording of the statute requires that the lewd or lascivious act be committed "with another person". According to the court:

It cannot be said that appellant's masturbation was committed by a person with 'another person'. The legislature seems to have implicitly recognized that section 800.02 would not be applicable to behavior such as this by designing other statutory provisions within chapter 800 to cover it.

Section 800.03, F.S. makes it a first degree misdemeanor, punishable by up to one year in county jail and a fine of up to \$1,000 for a person to "expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose."

The standard jury instruction for the offense states the following:

To prove the crime of [Indecent Exposure] [or] [Nakedness], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant)

[exposed or exhibited [his] [her] sexual organs].

[was naked].

2. [He] [She] [did so] [was naked]

[in a public place].

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<sup>1</sup> *Conforti v. State*, 800 So.2d 350 (Fla. 4<sup>th</sup> DCA 2001).

[on the private premises of another].

[so near the private premises of another as to be seen from those private premises].

3. (Defendant) intended the [exposure or exhibition of [his] [her] sexual organs] [or] [nakedness] to be in a vulgar, indecent, lewd, or lascivious manner.
4. The [exposure or exhibition of the sexual organs] [or] [nakedness] was in a vulgar, indecent, lewd, or lascivious manner.

Proof of mere nudity or exposure is not sufficient to sustain a conviction.

### *Definitions*

As used in regard to this offense the words "vulgar," "indecent," "lewd," and "lascivious" mean the same thing. They mean an unlawful indulgence in lust or a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act.

Acts are not vulgar, indecent, lewd, or lascivious unless such acts cause offense to one or more persons viewing those acts or unless the acts substantially intrude upon the rights of others.

A "public place" is any place intended or designed to be frequented or resorted to by the public.

In *Payne v. State*, 463 So.2d 271 (Fla. 2<sup>nd</sup> DCA 1984) the court reviewed a case in which a defendant had been charged with violating section 800.03, F.S. following his arrest for urinating in a public parking lot. The defendant claimed that the undisputed facts failed to establish that he exposed his sexual organ in a vulgar or indecent manner as required by the statute. The appellate court recognized that in order for there to be a violation of section 800.03, F.S., there must be a lascivious exposure of a sexual organ. The appellate court reversed the conviction and noted that the defendant could have been charged with disorderly conduct pursuant to section 877.03, F.S.<sup>2</sup> According to the First District Court of Appeal, "in order for nudity to be prosecutable under section 800.03, Florida Statutes, there must be a lewd or lascivious exhibition or exposure of the sexual organs."<sup>3</sup> A determination of whether an act was lewd or lascivious "is a question of fact and is based upon the circumstances of each individual case".<sup>4</sup>

Section 893.13, F.S. increases the severity of drug offenses committed in or within 1,000 feet of the real property comprising a child care facility or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility

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<sup>2</sup> See also, *Goodmakers v. State*, 450 So.2d 888 (Fla. 2<sup>nd</sup> DCA 1984)( reversing conviction of defendant who was naked while "asleep or unconscious, motionless on his back, and not in a state of sexual arousal" and holding that "in order for there to be a violation of section 800.03, there must be, coupled with mere nudity, 'lascivious' exposition or exhibition of the defendants sexual organs).

<sup>3</sup> *Duvallon v. State*, 404 So.2d 196 (Fla. 1<sup>st</sup> DCA 1981)(holding that defendant who picketed in front of the Supreme Court wearing only a placard did not violate the statute because the conduct was not lewd or lascivious)

<sup>4</sup> *WRH v. State*, 763 So.2d 1111 (Fla. 4<sup>th</sup> DCA 1999) (affirming conviction of defendant who exposed his sexual organs to witnesses on a public street while yelling profanities at them); *Ross v. State*, 876 So.2d 684 (Fla. 4<sup>th</sup> DCA 2004)(affirming conviction of defendant who wore short shorts in a Wal-Mart that were "substantially sure to lead to the exposure of his penis").

*Changes made to section 800.02 and 800.03 by HB 801:*

The bill amends section 800.03 to provide that a person who exposes or exhibits his or her sexual organs in violation of the section commits a second degree felony if the offense is committed on or within 1,000 feet of the real property comprising:

1. A child care facility;<sup>5</sup>
2. A public or private elementary, middle or secondary school between the hours of 6 a.m. and 12 midnight; or
3. A state, county or municipal park, a public beach, a community center,<sup>6</sup> or a publicly owned recreational facility at any time.

A second degree felony is punishable by up to fifteen years in prison and a fine of \$10,000.

The bill also amends section 800.02, F.S. to increase the severity of the offense from a second degree misdemeanor to a second degree felony if it occurs within 1,000 feet of one of the locations listed above.

*Warrantless arrests:* Currently, section 901.15, F.S. authorizes a law enforcement officer to arrest a person without a warrant under certain specified circumstances including when the person has committed a felony or misdemeanor or violated a local ordinance in the presence of the officer. The section authorizes an officer to arrest a person without a warrant when a felony has been or is being committed and the officer reasonably believes the person being arrested is or has committed the felony. The section also authorizes an officer to arrest a person without a warrant when the officer has probable cause to believe the offender has committed one of a list of specified misdemeanors. The bill amends this section to authorize a law enforcement officer who has probable cause, to arrest an offender for a misdemeanor violation of section 800.03, F.S. without a warrant. As a result of the bill, an officer with probable cause to believe a person has committed this offense will be able to arrest that person without a warrant even if the offense is not committed in the presence of the officer.

*Search warrants:* Under present law, section 933.18, F.S. provides that no search warrant shall be issued to search any private dwelling. The section contains a number of exceptions to this provision. For example, such a search warrant may be issued if one or more of the following misdemeanor child abuse offenses is being committed there:

1. Interference with custody, in violation of section 787.03;
2. Commission of an unnatural and lascivious act with a child in violation of s. 800.02;
3. Exposure of sexual organs to a child in violation of s. 800.03.

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<sup>5</sup> The bill refers to the definition of child care facility contained in section 402.302, F.S. Further, this will only apply to child care facilities that are in compliance with the signage requirements of s. 893.13(1)(c), F.S. This section refers to the posting of “a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.”

<sup>6</sup> The bill refers to the definition of the term “community center” contained in section 893.13. This section defines the term to mean a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public.

The bill amends this section to remove the reference to the exception only applying to *misdemeanor* offenses under section 800.02 or section 800.03. This apparently is done because the bill creates felony offenses in those sections.

C. SECTION DIRECTORY:

Section 1. Amends s. 800.02, F.S. relating to unnatural and lascivious acts to provide for enhanced penalties.

Section 2. Amends s. 800.03, F.S. relating to exposure of sexual organs to provide for enhanced penalties.

Section 3. Amends s. 933.18, F.S. relating to issuing a warrant to search a private dwelling.

Section 4. Amends s. 901.15, F.S. relating to warrantless arrests.

Section 5. Provides effective date of October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On February 26, 2008, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This Bill, if enacted, will continue this Legislature's direction of providing enhanced safety for our more vulnerable citizens.

It will help protect children by providing enhanced penalties for those individuals who perform lewd or indecent acts at or near places where children are known to assemble.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**